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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-905]

Certain Polyester Staple Fiber from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 30, 2018, the United States Court of International Trade (CIT or the Court) sustained the final results of redetermination pertaining to the antidumping duty (AD) administrative review of certain polyester staple fiber (PSF) from the People's Republic of China (China) for the period of review (POR) June 1, 2010, through May 31, 2011. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final results of the AD administrative review of the antidumping duty order on PSF from China and that Commerce is amending the final results with respect to the AD cash deposit rate assigned to Zhaoqing Tifo New Fibre Co., Ltd (Zhaoqing Tifo).

DATES: Applicable December 10, 2018.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-4047.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2013, Commerce published its *Final Results* of the 2010-2011 AD administrative review of PSF from China.¹ On April 7, 2015, the CIT remanded the *Final Results* to Commerce to reconsider the dumping margin calculation for Zhaoqing Tifo and to consider any potential for double counting of energy inputs by the inclusion of coal as a factor of production (FOP), as alleged by Zhaoqing Tifo.² In its First Remand Redetermination, Commerce relied upon a different set of financial statements that allowed Commerce to more accurately calculate Zhaoqing Tifo's dumping margin while also addressing any concerns of double counting of energy inputs.³ On August 30, 2017, the Court remanded this issue to Commerce a second time, finding that Commerce's selection of financial statements was not timely challenged by any party and was, thus, beyond the scope of the remand in *Zhaoqing Tifo I*.⁴ Therefore, the Court instructed Commerce to reconsider how the surrogate financial ratios originally used in *Final Results* account for energy sources and whether the inclusion of coal in the FOP database results in double-counting.⁵ In its Second Remand Redetermination, under respectful protest,⁶ Commerce relied on the financial statements used in the *Final Results*,⁷ and removed coal as a factor of production from the dumping margin calculation to address the

¹ See *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2013) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

² See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, 60 F. Supp. 3d 1328 (CIT 2015) (*Zhaoqing Tifo I*).

³ See *Final Results of Redetermination Pursuant to Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13-00044, Slip Op. 15-31 (April 9, 2015), dated July 9, 2015 (First Remand Redetermination).

⁴ See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, 256 F. Supp. 3d 1314, 1334 (CIT 2017) (*Zhaoqing II*).

⁵ *Id.*, 256 F. Supp. 3d at 1337.

⁶ See *Viraj Grp, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

⁷ *Final Results*, 78 FR at 2368, and accompanying IDM at Comment 2.

Court’s concern over potential double counting of energy inputs.⁸ On November 30, 2018, the CIT sustained Commerce’s Second Remand Redetermination.⁹

Timken Notice

In its decision in *Timken*,¹⁰ as clarified by *Diamond Sawblades*,¹¹ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision.¹² The CIT’s November 30, 2018, final judgment affirming the Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Results

Because there is now a final court decision, Commerce is amending its *Final Results*.

Producer/Exporter	Weighted-Average Dumping Margin (Percent)
Zhaoqing Tifo New Fiber Co., Ltd.	0.00

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s that the revised AD dumping margin for Zhaoqing Tifo is as follows:

⁸ See Final Results of Redetermination Pursuant to Court Remand *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13-00044, Slip Op. 17-118 (CIT August 30, 2017), dated November 6, 2017 (Second Remand Redetermination).

⁹ See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13-00044, Slip Op. 18-168 (CIT November 30, 2018).

¹⁰ See *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹¹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹² See Sections 516A(c) and (e) of the Act.

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by Zhaoqing Tifo using the assessment rate calculated by Commerce listed above.

Cash Deposit Requirements

Because cash deposit rate for Zhaoqing Tifo has been superseded by cash deposit rates calculated in intervening administrative reviews of the AD order on PSF from China, we will not alter the cash deposit rate for Zhaoqing Tifo.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 10, 2018.

Gary Taverman,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

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